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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE 24 HOUR FITNESS PREPAID
MEMBERSHIPS LITIGATION

CASE NO. 4:16-cv-01668
CONSOLIDATED CASES:
No. 3:16-cv-01668-JSW
No. 3:16-cv-02359-JSW

**DECLARATION OF RAFEY S.
BALABANIAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AGREEMENT**

Judge: Jeffrey S. White
Date: December 8, 2017
Time: 9:00 A.M.
Courtroom: 5, 2nd Floor

Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

1. I am an attorney admitted to practice in the United States District Court for the Northern District of California. I am entering this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement Agreement. (ECF No. 105.) This declaration is based upon my personal knowledge, except where expressly noted otherwise. If called upon to testify to the matters stated herein, I could and would competently do so.

2. I am the Managing Partner of Edelson PC. My firm along with the law firms Chimicles & Tikellis LLP, Tycko & Zavareei LLP, and Finkelstein Thompson LLP have been retained to represent Plaintiffs Kevin O'Shea, Mark Vitcov, Rod Morris, Michael Losquadro, Dipti Shah, and/or Russell Marchewka in this case and to act as proposed class counsel on behalf of the class.

A. The Federal and State Actions

3. This case was initiated on April 1, 2016, when Plaintiffs O'Shea, Vitcov, and Morris filed a putative class action complaint against Defendant 24 Hour Fitness USA, Inc. ("Defendant" or "24 Hour") in the Northern District of California, captioned *Kevin O'Shea, et al. v. 24 Hour Fitness USA, Inc.*, Case No. 3:16-cv-1668-EDL. Shortly thereafter, on April 29, 2016, Plaintiff Marchewka filed a materially identical lawsuit captioned *Russell Marchewka v. 24 Hour Fitness USA, Inc.*, Case No. 3:16-02359-MEJ.

4. The two cases (hereafter referred to as the "Federal Action") were then consolidated for all purposes into a case captioned *In re 24 Hour Fitness Prepaid Memberships Litigation*, Case No. 4:16-cv-01668-JSW. Plaintiffs O'Shea, Vitcov, Morris, and Marchewka later joined together and, adding Plaintiff Losquadro, filed a consolidated class action complaint on July 26, 2016, which they later amended on December 9, 2016.

5. On April 15, 2016, shortly prior to the filing of the *Marchewka* action, Plaintiff Shah served 24 Hour with a pre-suit demand letter pursuant to California's Consumers Legal Remedies Act (CLRA). Thereafter on June 2, 2016, Plaintiff Shah filed a class action lawsuit against 24 Hour in the California Superior Court in Alameda County (the "State Action") asserting

1 similar claims to those asserted in the Federal Action. On November 1, 2017, Plaintiff Shah joined
2 the other Plaintiffs in filing a Conditional Third Amended Consolidated Complaint, asserting
3 numerous causes of action under the laws of various states, including those of California, Oregon,
4 Texas and Washington. (ECF No. 104, “TAC”.)

5 6. The separate filings by the various firms involved in the Federal and State Actions
6 were not coordinated between the firms in any way. The cases were filed independently of one
7 another and resulted from each Plaintiff’s experience of the issues involved in this case. As
8 discussed more fully below, in the year leading up to the settlement, counsel for all Plaintiffs in
9 the Federal and State Actions coordinated their efforts and worked cooperatively with respect to
10 informal discovery and settlement negotiations. However, the attorneys had never met prior to
11 their joint efforts to settle the Actions on a consolidated basis.

12 7. As alleged in the TAC, Defendant was the operator of the largest chain of fitness
13 centers in the United States. (TAC ¶ 19.) Prior to 2006, Defendant’s prepaid membership contracts
14 stated that it would not increase the annual renewal amounts for lifetime members so long as they
15 remained members in good standing. After April 2006, however, Plaintiffs alleged that Defendant
16 changed the membership contracts to provide that the annual renewal amount was only guaranteed
17 for an additional one year beyond the initial term. Plaintiffs alleged that, despite this change,
18 Defendant’s sales representatives continued to represent that the contract promised guaranteed
19 lifetime renewal amounts. The TAC alleges that 24 Hour Fitness sales employees explicitly told
20 consumers – as they were trained to do – that there was “no need to spend the time to read all the
21 fine print.” (*Id.* ¶ 28, n. 7.) On or around June 1, 2015, 24 Hour Fitness began informing certain
22 prepaid members that their annual renewal amount would increase. Once that started happening,
23 consumers began posting complaints online describing virtually identical sales pitches. (*Id.* ¶¶ 28–
24 30.)

25 ***B. Prosecution of the Actions and Settlement Discussions***

26 8. 24 Hour Fitness moved to dismiss the Federal Action on several grounds, and after
27 the issues were fully briefed, the Court granted 24 Hour Fitness’s motion without prejudice on
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1 September 1, 2017 and granted Plaintiffs leave to amend. The Federal Plaintiffs filed their second
2 amended complaint on September 22, 2017.

3 9. Shortly after the Plaintiff Shah's lawsuit was filed, the parties in the State Action
4 commenced discussing and exchanging drafts of the case management statement outlining their
5 respective claims and positions. In addition, on July 7, 2016, Plaintiff Shah served 24 Hour Fitness
6 with extensive discovery requests.

7 10. However, during the pendency of 24 Hour Fitness's motion to dismiss in the
8 Federal Action and prior to 24 Hour Fitness's deadline to respond to Plaintiff Shah's discovery
9 requests in the State Action, 24 Hour Fitness suggested that Plaintiffs in the Federal and State
10 Actions agree to a limited stay of the Actions to provide 24 Hour Fitness an opportunity to conduct
11 its investigation and compile discovery that 24 Hour intended to provide to Plaintiffs. The parties
12 agreed to stay their respective proceedings, to provide them time to compile and exchange
13 documents and information *viz-a-viz* an informal discovery process. This exchange of information
14 was to be followed up by an in-person meeting at which the parties would present their information
15 and discuss their respective positions.

16 11. Plaintiffs' counsel in the Federal and State Actions coordinated their efforts to
17 investigate and compile information that had been requested by 24 Hour Fitness. Plaintiffs' counsel
18 spent time and resources locating witnesses, interviewing 24 Hour Fitness gym members and
19 former 24 Hour Fitness employees. Plaintiffs' counsel also reviewed and compiled various
20 exhibits, including a lengthy spreadsheet of consumer complaints that were similar to the
21 allegations in the Federal and State complaints.

22 12. Plaintiffs' counsel combed through dozens of consumer complaint boards and
23 websites, including the Better Business Bureau which had over 650 pages of consumer complaints
24 against 24 Hour Fitness. Plaintiffs' counsel also collected declarations from Plaintiffs, former
25 employees and potential class members who had contacted them complaining of the same
26 wrongdoing as that alleged in the complaints. Plaintiffs produced to 24 Hour Fitness responses to
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1 its questions and various extensive exhibits compiled after their further intensive investigation and
2 witness outreach and interviews.

3 13. 24 Hour Fitness likewise responded to Plaintiffs' requests for documents producing
4 information concerning its operations, gym membership contracts, and sales and marketing
5 policies and practices. 24 Hour Fitness produced over 7,000 documents consisting of nearly 50,000
6 pages. These documents included marketing and sales materials, internal emails, and employee
7 presentations, to name a few of the categories produced by 24 Hour Fitness. Plaintiffs' counsel
8 then spent significant time reviewing documents and memorializing key information.

9 14. Following this informal exchange of information, counsel for the parties (including
10 Plaintiffs' counsel in both the Federal and State Actions) met in person in San Francisco, California
11 on October 5, 2016.

12 15. At the meeting, the parties engaged in a preliminary discussion about what they
13 believed to be the potential strength and weaknesses of their respective positions, the information
14 that had been exchanged, and whether early resolution was possible.

15 16. Shortly thereafter, the parties agreed to engage in a mediation and selected
16 mediator John B. Bates Jr. of JAMS in San Francisco to mediate the dispute with the goal of
17 reaching a global class action settlement.

18 17. On January 23, 2017 and again on January 31, 2017, the parties (and to a lesser
19 extent 24 Hour's insurance carrier) participated in an all-day mediation before Mr. Bates. Although
20 the parties did not reach a final agreement during the mediation, they made substantial progress
21 toward a global resolution. The parties outlined some parameters relating to benefits, the structure
22 of the settlement and the claims process. Building on the progress made in the mediation, the
23 parties continued having discussions following the mediation. These discussions included several
24 follow-up mediation calls with Mr. Bates, and, after making substantial progress with Mr. Bates,
25 the parties continued their arm's-length negotiation with numerous calls between counsel. From
26 February 2017 through present, the parties have had dozens of calls and numerous communications
27 and exchanges of multiple drafts of the settlement agreement, the notice, and claim form.

1 18. This arm's-length negotiation, commenced over a year ago, has culminated in the
2 Settlement Agreement now before the Court.

3 ***C. The Proposed Settlement Class, Class Representatives, and Class Counsel***

4 19. Based on 24 Hour Fitness's investigation and documents, and as confirmed through
5 Plaintiffs' independent investigation, the Settlement Class includes individuals who entered into a
6 prepaid membership agreement marketed or sold on or after April 1, 2006, with certain exclusions,
7 including those members who had terminated their memberships prior to receiving notice of any
8 increase to the annual renewal amount.

9 20. Based on information provided by 24 Hour Fitness, there are approximately
10 255,000 proposed settlement class members.

11 21. Prior to and throughout this litigation, Plaintiffs have demonstrated their adequacy
12 as class representatives and continued willingness to vigorously prosecute this case. They have
13 regularly consulted with counsel, aided in the prosecution of the litigation, reviewed pleadings,
14 documents and the proposed Settlement Agreement, provided declarations as evidence to be used
15 in the mediation, and indicated their desire to continue protecting the interests of the class through
16 settlement or continued litigation.

17 22. As detailed above, Edelson PC, Chemicles & Tikellis LLP, Tycko & Zavareei LLP,
18 and Finkelstein Thompson LLP, the law firms representing Plaintiffs and the proposed settlement
19 class members, have and will continue to represent the interests of the class members. Each firm
20 is regularly engaged in major complex litigation, has extensive experience in consumer class action
21 lawsuits, and has frequently been appointed lead class counsel by courts throughout the country.

22 23. My firm, Edelson PC has devoted—and will continue to devote—a significant
23 amount of time and effort to this litigation, which began with our initial investigation of Plaintiffs'
24 claims and has continued to this day, contributing resources towards discovery, motion practice,
25 and settlement negotiations.

26 24. Chemicles & Tikellis LLP and Tycko & Zavareei LLP have also devoted—and
27 have committed to continue devoting—a significant amount of time and effort to this litigation,
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including by playing an integral role in the negotiation and drafting of the Settlement Agreement and its Exhibits. Both firms were instrumental in settlement negotiations, and along with my firm, Chimicles & Tikellis LLP bore the lion's share of responsibility among Plaintiffs' counsel in drafting the Settlement Agreement and its Exhibits.

25. Finkelstein Thompson LLP has also been active in this litigation from the beginning and will continue to devote whatever resources are necessary to bring the litigation to a successful conclusion.

D. Exhibits

26. Attached hereto as Exhibit A is a true and accurate copy of the Joint Stipulation and Settlement Agreement, with Exhibits.

27. Attached hereto as Exhibit B is a true and accurate copy of the Firm Resume of Edelson PC.

28. Attached hereto as Exhibit C is a true and accurate copy of the Firm Resume of Chimicles & Tikellis LLP.

29. Attached hereto as Exhibit D is a true and accurate copy of the Firm Resume of Tycko & Zavareei LLP.

30. Attached hereto as Exhibit E is a true and accurate copy of the Firm Resume of Finkelstein Thompson LLP.

* * *

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of November 2017 at San Francisco, California.



CERTIFICATE OF SERVICE

I, Rafey S. Balabanian, an attorney, certify that on November 1, 2017, I served the above and foregoing ***Declaration of Rafey S. Balabanian in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement Agreement*** by causing true and accurate copies of such paper to be filed and transmitted to all counsel of record via the Court's CM/ECF electronic filing system.

/s/ Rafey S. Balabanian